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 GIANT INTERNATIONAL (USA) LTD.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of
 SORENSEN RESEARCH AND
 DEVELOPMENT TRUST,

 Plaintiff,

 v.

 GIANT INTERNATIONAL (USA) LTD.,
 a Delaware corporation, and DOES 1-10,

 Defendants.

No. 07-CV-02121-BTM-CAB

**MEMORANDUM OF POINTS &
 AUTHORITIES IN SUPPORT OF
 DEFENDANT GIANT
 INTERNATIONAL (USA) LTD.'S
 EX PARTE APPLICATION TO
 CONTINUE EARLY NEUTRAL
 EVALUATION CONFERENCE**

GIANT INTERNATIONAL (USA) LTD., a
 Delaware corporation,

 Cross-Complainant,

 v.

 JENS ERIK SORENSEN, as Trustee of
 SORENSEN RESEARCH AND
 DEVELOPMENT TRUST,

 Cross-Defendant.

Defendant and Counterclaimant Giant International (USA) Ltd. (“Giant”) hereby submits this Memorandum of Points & Authorities in Support of its *Ex Parte* Application to Continue the Early Neutral Evaluation Conference (“ENE”) on January 28, 2008.

I. INTRODUCTION

Plaintiff filed this action for infringement of U.S. Patent No. 4,935,184 (“the ‘184 Patent”) on November 6, 2007. On October 11, 2007, the United States Patent and Trademark Office entered an order granting reexamination of the ‘184 Patent, finding that there are fourteen “substantial new questions of patentability” with respect to the claims of the ‘184 Patent. A copy of the reexamination order is attached as Exhibit A. As a result of this reexamination, the Court has stayed the related case of *Sorensen v. Black & Decker Corp.*, No. 06cv572 BTM (CAB) pending the disposition of the reexamination proceeding.

On December 10, 2007, Giant moved the Court to grant a similar stay of this action pending the reexamination. (Docket # 15.) This motion will be heard on February 8, 2008 by the Honorable Barry Ted Moskowitz, just over a week from the January 28 setting for the ENE conference. Giant therefore respectfully requests that the Court continue the ENE until after Judge Moskowitz has decided Giant’s Motion to Stay.

II. ARGUMENT

Good cause exists to continue the ENE until after Giant’s Motion to Stay has been decided. The principal purposes of the ENE are to facilitate settlement, set a discovery schedule, and schedule a date for the claim construction hearing. These purposes will be best served if the ENE is continued until after the Motion to Stay is decided.

A. The Pending Motion To Stay And Reexamination Make Settlement Unlikely.

Between October 2004 and May 2006, the parties exchanged lengthy correspondence debating the merits of Plaintiff’s infringement claims in an attempt to resolve this dispute without litigation. During this time, Plaintiff maintained that Giant has infringed the ‘184 Patent, while Giant maintained that it does not infringe. Giant also repeatedly declined Plaintiff’s offers of a license. (Declaration of Elizabeth G. Borland filed concurrently herewith (“Borland Decl.”) ¶ 3.)

1 After May 2006, Giant heard nothing from Plaintiff's counsel for seventeen months. Then,
2 on October 17, 2007, Plaintiff's counsel sent Giant a letter again alleging infringement and
3 threatening litigation, but did not disclose the reexamination in this correspondence. Plaintiff filed
4 this action three weeks later. (Borland Decl. ¶ 4.)

5 Giant has consistently maintained that it does not infringe the '184 Patent, and the pending
6 reexamination proceeding has made Giant more confident of its position, particularly since the
7 pending reexamination may eliminate or significantly narrow the claims of the '184 Patent. Given
8 the potentially significant outcome of the reexamination and the likelihood of a stay of this action in
9 light of the Court's stay of the related *Black & Decker* case, Giant believes it is highly unlikely that
10 the parties will have meaningful and productive settlement discussions before a ruling issues on
11 Giant's Motion to Stay.

12 **B. Any Schedule Set At The ENE Will Be Moot If A Stay Is Granted.**

13 Setting a discovery schedule and a date for the claim construction hearing before the Court
14 rules on the Motion to Stay is also premature and will unnecessarily burden Giant and the Court. If
15 the Court grants the stay, any case schedule set at the ENE will be moot.

16 Moreover, it will be a significant burden for Giant to attend the ENE. The person who would
17 represent Giant at the ENE is either Giant's Chief Executive Officer Max Loong or its Controller
18 Gary Yam. Both Mr. Loong and Mr. Yam reside in Hong Kong, China. Requiring either of them to
19 travel to San Diego for the ENE when the case could be stayed just days or weeks later would
20 impose a significant and undue burden on Giant.

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1 **III. CONCLUSION**

2 Giant respectfully requests that the Court continue the ENE until after a ruling issues on the
3 Motion to Stay. A brief continuance of the ENE until after Judge Moskowitz rules on Giant's
4 Motion to Stay will not prejudice either of the parties. Instead, it will serve the interests of judicial
5 economy and avoid an unnecessary burden on the parties. If the Court grants this continuance and
6 Judge Moskowitz denies the stay, Giant agrees to contact Plaintiff and the Court within five court
7 days of the ruling to schedule a new date for an ENE.

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9 Dated: December 17, 2007

JACZKO GODDARD LLP

10 SMITH, GAMBRELL & RUSSELL, LLP

11
12 By: /s Allison H. Goddard
13 Allison H. Goddard
14 Attorneys for Defendant GIANT
INTERNATIONAL (USA) LTD.
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Sorensen v. Giant International (USA) Ltd.

USDC Case No. 07cv02121 BTM (CAB)

Certificate of Service

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served this 17th day of December, 2007, with a copy of this document via the Court's CM/ECF system. I certify that all parties in this case are represented by counsel who are CM/ECF participants. Any other counsel of record will be served by electronic mail, facsimile transmission, and/or first class mail on the following business day.

/s/ Allison H. Goddard